

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Foreign Ownership Guidelines for FCC Common)	IB Docket No. 05-55
Carrier and Aeronautical Radio Licenses)	(Terminated)

ORDER

Adopted: November 10, 2014

Released: November 10, 2014

By the Chief, International Bureau:

1. In this Order, we dismiss as moot the Petition for Reconsideration filed by Wilkinson Barker Knauer, LLP¹ of the International Bureau's (Bureau) *Foreign Ownership Guidelines* for common carrier, aeronautical en route, and aeronautical fixed radio station licenses.²

2. On November 17, 2004, the Bureau issued the *Foreign Ownership Guidelines*, in which it described the Commission's then-existing policy and precedent on the foreign ownership provisions of section 310 of the Communications Act of 1934, as amended (the "Act"),³ as applied to common carrier and aeronautical radio station applicants, licensees, and spectrum lessees.⁴ On December 17, 2004, Wilkinson Barker Knauer, LLP (Petitioner) filed its petition requesting that the Bureau reconsider one aspect of the *Foreign Ownership Guidelines*.⁵ Petitioner asked the Bureau to revise the guidelines to state that section 310(b)(3) applies only to direct foreign ownership of licensees and that section 310(b)(4) applies to all indirect foreign ownership, regardless of whether the foreign investment is held in a U.S.-organized company that has a controlling interest in the licensee or in a U.S.-organized company that has

¹ Petition for Reconsideration of Wilkinson Barker Knauer, LLP, IB Docket No. 05-55, filed Dec. 17, 2004 (Petition).

² *Foreign Ownership Guidelines for FCC Common Carrier and Aeronautical Radio Licenses*, DA 04-3610, 19 FCC Rcd 22612 (Int'l Bur. 2004), erratum, DA 06-1242, 21 FCC Rcd 6484 (Int'l Bur. 2006) (*Foreign Ownership Guidelines*). For purposes of this Order, we refer to applicants, licensees, and spectrum lessees as "licensees" unless the context warrants otherwise. We refer to aeronautical en route and aeronautical fixed radio station licenses (as those terms are used in 47 U.S.C. § 310(b)) collectively using the shorthand "aeronautical," and for these purposes we do not include other types of aeronautical radio station licenses issued under Part 87 of the Commission's rules, 47 C.F.R. §§ 87.1 *et seq.*

³ 47 U.S.C. §§ 310(a), (b).

⁴ *Foreign Ownership Guidelines*, 19 FCC Rcd at 22614-15, 22634-37. The Bureau stated that the *Foreign Ownership Guidelines* are advisory in nature, are not binding on the Commission, do not modify the Commission's existing foreign ownership analytical framework, and may not be cited as precedent. *Id.*

⁵ Notwithstanding the Bureau statements about the intent and effect of these guidelines, *see supra* note 4, Petitioner argued that they nevertheless constitute "final action" for purposes of section 1.106 of the Commission's rules, governing petitions for reconsideration with respect to such actions taken pursuant to delegated authority in non-rulemaking proceedings. Petition at 1-2 n.2, citing 47 C.F.R. § 1.106. The Petition notes the Bureau's statement that it "expects that these Guidelines will be used by licensees to ensure their continuing compliance with the foreign ownership requirements of Section 310 of the Act." Petition at 1-2 n.2, quoting *Foreign Ownership Guidelines*, 19 FCC Rcd at 22615.

a non-controlling interest in the licensee.⁶ On February 11, 2005, the Bureau sought comment on the issues raised by the Petition.⁷ In response, only one party, Leventhal Senter & Lerman PLLC (LS&L), filed comments.⁸ LS&L supported the Petition and sought certain additional clarifications.⁹

3. We dismiss the Petition because we find that Petitioner's request to revise the *Foreign Ownership Guidelines*' analysis of section 310(b)(3) is now moot.¹⁰ Since the filing of the Petition, the Commission has adopted a forbearance approach to section 310(b)(3). In the *Foreign Ownership First Report and Order*, the Commission determined to forbear, pursuant to section 10(a) of the Act,¹¹ from applying the 20 percent foreign ownership limit set forth in section 310(b)(3) to the class of common carrier licensees in which foreign ownership in the licensee is held through one or more intervening U.S.-organized entities that do not control the licensee, to the extent the Commission determines such foreign ownership is consistent with the public interest review of foreign ownership subject to section 310(b)(4) of the Act.¹² The Commission adopted the section 310(b)(3) forbearance approach in response to comments that, like the instant Petition, asked the Commission to treat all "indirect" foreign interests in common carrier licensees in a similar manner under section 310(b)(4).¹³ The Commission found that the

⁶ Petition at 3, 13. Petitioner asked, in the alternative, that the Bureau refer the matter to the Commission. *Id.* at 3.

⁷ *International Bureau Seeks Comment on Petition for Reconsideration of the Foreign Ownership Guidelines for FCC Common Carrier and Aeronautical Radio Licenses*, IB Docket No. 05-55, Public Notice, DA 05-384, 20 FCC Rcd 2509 (Int'l Bur. 2005).

⁸ Comments of Leventhal Senter & Lerman PLLC, IB Docket No. 05-55, filed Mar. 14, 2005 (LS&L Comments). In addition, Vodafone Group PLC (Vodafone) and Verizon Wireless made ex parte presentations in support of the legal argument raised by the Petition. *See, e.g.*, ex parte filing of Vodafone, Aug. 2, 2011; ex parte filing of Vodafone and Verizon Wireless, Oct. 7, 2011.

⁹ *See* LS&L Comments at 2-6. These comments agreed with the Bureau's analysis in the *Foreign Ownership Guidelines* of *Datran Transmission Co.*, 59 F.C.C.2d 439 (1975) (*Datran*), but urged that these views "be expanded to include all Commission licenses subject to Section 310(b)," to include broadcast licenses. Comments at 4-6. Because the Bureau's *Foreign Ownership Guidelines* expressly extend only to common carrier and aeronautical licenses, and LS&L's *Datran* argument is not within the scope of the Petition or the Bureau's request for comment in this proceeding, we decline to address this question. LS&L's other requests for clarification with respect to sections 310(b)(3) and 310(b)(4), *see* Comments 2-4, are also outside the scope of the Petition and the Bureau's request for comment, and are addressed in any event by the *Foreign Ownership First Report and Order* and *Second Report and Order* with respect to the Commission's treatment of "indirect" foreign investment in common carrier licensees. *See Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, IB Docket No. 11-133, First Report and Order, FCC 12-93, 27 FCC Rcd 9832 (2012) (*Foreign Ownership First Report and Order*); *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, IB Docket No. 11-133, Second Report and Order, FCC 13-50, 28 FCC Rcd 5741 (2013) (*Foreign Ownership Second Report and Order*). Accordingly, we find no reason to address these questions in this Order.

¹⁰ Accordingly, we need not address the Petition's argument that the intent and effect of the *Foreign Ownership Guidelines* qualify them as a "final action" subject to reconsideration pursuant to section 1.106 of the Commission's rules.

¹¹ 47 U.S.C. § 160(a).

¹² *Id.* § 310(b)(4). *Foreign Ownership First Report and Order*, 27 FCC Rcd 9832. *See also Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5754, ¶ 19 (adopting a comprehensive set of rules that apply both to common carrier licensees subject to the Commission's section 310(b)(3) forbearance approach that seek Commission approval to exceed the 20 percent foreign ownership limit in section 310(b)(3), and to common carrier and aeronautical licensees that seek approval for the foreign ownership of their controlling U.S. parents to exceed the 25 percent foreign ownership benchmark in section 310(b)(4)).

¹³ *Foreign Ownership First Report and Order*, 27 FCC Rcd at 9834, ¶ 3.

section 310(b)(3) forbearance approach would ensure that all “indirect” foreign interests in a common carrier licensee – whether held through a U.S.-organized entity that controls the licensee or through a U.S.-organized entity that does not control the licensee – are treated the same, by applying to all such interests the policies and procedures the Commission uses in its review of foreign ownership that is subject to section 310(b)(4).¹⁴ We find that the Commission’s section 310(b)(3) forbearance approach provides the relief sought by the Petitioner in this proceeding and, on this basis, we dismiss the Petition as moot.¹⁵

I. ORDERING CLAUSES

4. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405 and section 1.106 of the Commission’s rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration of Wilkinson Barker Knauer, LLP filed on December 17, 2004, is DISMISSED.

5. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release. Applications for review under section 1.115 of the Commission’s rules, 47 C.F.R. § 1.115, may be filed within thirty days of the date of public notice of this order.

6. IT IS FURTHER ORDERED that this proceeding, IB Docket No. 05-55, IS HEREBY TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Mindel De La Torre
Chief, International Bureau

¹⁴ *Id.* at 9837, ¶ 10. As urged by commenters, the revised policies and procedures that the Commission subsequently adopted in the *Second Report and Order* for its review of foreign investment in common carrier licensees “treat foreign investment under section 310(b)(4) and section 310(b)(3) forbearance consistently.” *Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5763, ¶ 36.

¹⁵ We note that the forbearance approach adopted in the *Foreign Ownership First Report and Order* extends only to common carrier licenses and not aeronautical licenses, in accordance with the limitations of the Commission’s forbearance authority in 47 U.S.C. § 160. However, the focus of the Petition is on foreign investment in “the U.S. telecommunications market” (Petition at 3, 4), and the Petition does not address any specific concerns with respect to aeronautical licenses. Moreover, the Commission has never had occasion to apply section 310(b)(3) or section 310(b)(4) to an aeronautical applicant or licensee. Thus, we see no reason to address the Petition as it may relate to aeronautical licenses.